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# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

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SHELL COMPANY OF CALIFORNIA,  
a Corporation, *Appellant,*  
*vs.*

PACIFIC STEAMSHIP COMPANY, a Corpo-  
ration of Portland, Maine, Claimant and Owner  
of the Steamship "ADMIRAL GOODRICH,"  
Her Tackle, Apparel and Furniture,  
*Appellee.*

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## Brief of Counsel for Appellant

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UPON APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE WESTERN  
DISTRICT OF WASHINGTON,  
NORTHERN DIVISION.

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WILMON TUCKER,  
IVAN L. HYLAND,  
FORD Q. ELVIDGE,  
*Counsel for Appellant.*

307 Lowman Bldg., Seattle, Wash.



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**STATEMENT OF THE FACTS.**

This is a suit to impress a lien in the sum of \$2267.10 against the respondent *Admiral Goodrich* for fuel oil delivered to it in San Francisco Bay by libellant on August 14, 1919.

During the year between October 10, 1918, and October 9, 1919, the Gulf Mail Steamship Company

had a fuel oil contract with the libelant for delivery of fuel oil to its steamers. On July 23, 1919, the claimant, Pacific Steamship Company, at that time the owner of the *Admiral Goodrich*, entered into a charter party with the Gulf Mail Steamship Company for said vessel (Ex. A to Libel pg. 7 Ap. on Ap.). Previous to this and during the time from the summer of 1918 until the summer of 1919, the *Admiral Goodrich* had been in the Orient under the operation of the claimant, and the Asiatic Petroleum Company of the Orient, an allied company of libelant, had been taking orders for fuel for the *Admiral Goodrich* from the claimant, the libelant billing the vessel from its San Francisco office as agent for the Asiatic Petroleum Company, and sending the bills to the San Francisco office of the claimant (Depositions Buckley, Jr., 6-12, O'Connell, 3-4).

The first occasion the San Francisco office of the libelant had to deliver oil to the *Admiral Goodrich* was in San Francisco in the morning of August 14, 1919, when the president of the Gulf Mail Steamship Company, Mr. Hartman, telephoned the assistant manager of libelant's fuel oil department at San Francisco requesting immediate delivery, and that afternoon the fuel oil in question was delivered

(Buckley's Deposition, p. 2). The bill was made out to "The Admiral Goodrich and Owners, care Gulf Mail Steamship Company, 1 Drum Street, San Francisco, California." As above mentioned, the *Admiral Goodrich* was at that time under charter to the Gulf Mail Steamship Company. Of this fact libelant was totally unaware, as well as the provisions of the charter. Libelant was also unaware of the true ownership of the vessel.

The charter was what is known as a Time Charter, government form, and provided *inter alia* as follows:

2. "That the Owners shall provide and pay for all provisions, wages, and Consular Fees of the Captain, Officers, Engineers, Firemen and Crew; shall pay for the insurance on the vessel;

\* \* \* \* \*

3. "That the Charterers shall provide and pay for all bunker coals or Fuel Oil, \* \* \*

5 B. "Charterers agree to keep vessel free from liens and redeliver her free from liens.

11. "That the captain (although appointed by the Owners) shall be under the orders and direction of the Charterers as regards employment, agency or other arrangements; \* \* \*."

It will be seen that the charterer had no authority to bind the vessel for fuel oil.

The learned trial court was of the opinion that

the libelant should be charged with such knowledge of the ownership as would require reasonable diligence to ascertain the terms of the charter party and thus the absence of the charterer's authority, and denied the lien. Libelant appeals.

This case, therefore, presents to this Honorable Court for determination the question of when a supply man may have a lien for fuel furnished to a ship on the order of a charterer who has no authority to bind it for such.

## SPECIFICATIONS OF ERROR.

Appellant, for the reversal of the decree denying the right of lien, specifies and relies upon the following errors therein: (Apostles on Appeal, 54-7).

## I.A.

In holding that libelant was not entitled to the lien.

## I.

Because the above-named libelant under the proof in the above entitled cause has shown that it had a right to a lien for the oil furnished under the Act of Congress of June 23rd, 1910, which is now incorporated in the Merchant Marine Act of 1920.

## II.

Because the evidence shows that none of the employees or officers of the libelant had knowledge or notice that there was a charter upon the steamship *Admiral Goodrich*, and that none of the officers of the libelant corporation had any notice or knowledge of any of the provisions of such charter.

## III.

Because the oil was sold by the libelant to the *Admiral Goodrich* as ordered by the manager of the steamer, and charged to the steamer and owners, and because the said steamship *Admiral Goodrich* was advertised as one of the Gulf Mail steamers in the "Guide".

## IV.

Because according to the law the burden was upon the claimant to show that the libelant knew or had reasonable cause to believe that a charter existed, and the mere fact that in the year 1918 and 1919 because the libelant furnished oil to the Pacific Steamship Company for the *Admiral Goodrich* in the Orient is not sufficient notice of ownership or of the chartering said vessel to exempt the steamship from a lien for the oil so furnished.

## V.

Because the evidence shows that when the first oil was furnished to the *Admiral Goodrich* in the Orient it was prior to the time that the steamship *Admiral Goodrich* was owned by the Pacific Steamship Company.

## VI.

Because the evidence shows that the bill of sale to the Pacific Steamship Company of the steamship *Admiral Goodrich* was never filed in the custom house in San Francisco or in any other place than in the custom-house in Portland, Maine; nor was the charter ever filed for record in any public office whatsoever.

## VII.

Because there is nothing shown in the letters and correspondence which has been entered in evidence in the above entitled cause in any manner showing the ownership of the steamer *Admiral Goodrich*.

## VIII.

Because the evidence taken as a whole shows conclusively that the libelant did not have any notice of the ownership of said vessel nor of the existence of any charter and delivered the oil in good faith for the use of said vessel, and which was used upon said vessel.

## IX.

Because the above-named claimant failed to sustain the burden of proof placed upon it by reason of the Act of Congress of June 23rd, 1910.

The assignments of error may all be grouped and discussed under the one head that the learned trial court erred in denying libelant's right to a lien, because there was no proof by claimant of knowledge in libelant of the ownership of the vessel, of the existence or terms of the charter party, or of circumstances showing lack of good faith in libelant in supplying the oil.

## ARGUMENT.

### THE LAW.

In view of the confusion among the authorities on this point we ask the indulgence of this court in permitting us to discuss the law somewhat at length and in detail.

The Time Charter, government form, was construed in *The Kate*, 164 U. S. 458.

The right to liens on vessels operating under such charters depends today upon the Act of June 23, 1910; 36 Stat. 604; Comp. Stat. 7783-7787, now incorporated in the Merchant Marine Act of 1920, with slight changes. The pertinent parts of this Act read:

“P. Any person furnishing repairs, supplies, \* \* \* or other necessities, to any vessel \* \* \* upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel \* \* \* and it shall not be necessary to prove that credit was given the vessel.

“Q. The following persons shall be presumed to have authority from the owner to procure \* \* \* supplies \* \* \* : The managing owner, ship’s husband, master, or any person to whom the management of the vessel at the port of supply is intrusted.

“R. The officers and agents of a vessel specified in Q shall be taken to include such officers and agents when appointed by a charterer, by an order *pro hac vice*, or by an agreed purchaser in possession of the vessel; but nothing in this section shall be construed to confer a lien when the furnisher knew, or by exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies, or other necessities was without authority to bind the vessel therefor.”

*MERCHANT MARINE ACT, 1920. Section 30.*

It will be noted that the fuel oil in question was furnished on the order of the charterer. This, however, is immaterial, for the charterer under the act is the “person to whom the management of the vessel at the port of supply is intrusted,” and ranks equally with the managing owner, ship’s husband and master in power to permit a lien. Prior to the act of June 23, 1910, the Supreme Court of the United States in the case of *The Kate* (*supra*), referred to a government form Time Charter as giving to the time charterer “the possession and control of the *Kate*.”

The act of June 23, 1910, made certain very marked changes in the law dealing with the right of supplymen to liens on vessels.

“It created a presumption of law of the vessel’s liability for all repairs, supplies and other necessities ordered by the master, managing owner, ship’s husband, charterer, any person to whom the management of the vessel is intrusted at the port of supply, owner, *pro hac vice*, and conditional vendee.” *The Oceana* (C. C. A. 2nd Cir. 1917), 244 Fed. 80, 156 C. C. A. 508.

By it the presumption against the credit being given the ship was swept away. So far as the presumed power of the charterer or anyone else in possession to bind the ship is concerned it became the same as the presumed power of the master. By the statute master and charterer in possession rank the same in this respect.

By section “R,” an agent appointed by a charterer has specific authority to bind the chartered ship for materials purchased (subject, of course, to the proviso therein contained), although this direct declaration of authority in the charterer would seem hardly necessary in view of the power conferred in section “Q” upon “any person to whom the management of the vessel at the port of supply is intrusted.”

Since the charterer’s agent has authority, it would require no argument to establish authority in the charterer.

Therefore, under the above act, an oil company furnishing oil to a ship upon the order of the time charterer has a maritime lien against the ship, unless the oil company "knew or by exercise of reasonable diligence could have ascertained, that because of the terms of a charter party" the charterer "was without authority to bind the vessel."

We pass, then, to the principal question in this case—the meaning and application of the above clause. This is giving the courts some difficulty. The Circuit Court of Appeals for the Third Circuit has held that

"This proviso is nothing more than a statutory declaration of a principle long recognized in maritime jurisprudence and repeatedly announced by the Supreme Court of the United States." *The Yankee*, 233 Fed. 919, 926, Decided May 18, 1916. *The South Coast*, 247 Fed. 84, 88, C. C. A. 9th Circuit, 1917. Affirmed March 1, 1920, 40 Supreme Court Reporter, page 233.

There can be no doubt as to the correctness of the above decisions when read with reference to *The Kate* (*supra*), where the following language was used:

"As the charterer had agreed to provide and pay for all coal used by the vessel, he had no authority to bind the vessel for supplies furnished to it. His want of authority to

charge the vessel for such an expense was known or *could have been known to the libellant by the exercise of due diligence on its part.*"

164 U. S. 466.

The court further said:

"But no such necessity can be suggested, and no such reason urged, in support of an implied lien for supplies furnished to a charterer, *when the libellant at the time knew, or by such diligence as good faith required could have ascertained*, that the party upon whose order they were furnished was without authority from the owner to obtain supplies on the credit of the vessel, but had undertaken, as between itself and the owner, to provide and pay for all supplies required by the vessel." 164 U. S. at page 516, 517.

The proviso being merely a declaration of a legal principle, it is necessary to consider exactly what this principle was. *The Kate* (*supra*), is the leading case in point and the law as laid down in it was consistently followed by the courts until the adoption of the Act of June 23, 1910. This action involved the British S. S. "Kate" chartered to the United States and Brazil S. S. Co. under the time charter above referred to. The Berwind White Coal Mining Company supplied certain coal to the ship upon the request of the charterer. The charterers shortly thereafter became financially involved and the Coal Mining Company filed a libel against the S. S. "Kate" for the value of the coal delivered.

The libelant had had continuous dealings for many months with the charterers supplying coal to owned or chartered vessels. It knew that each vessel chartered by the Steamship Company had an agent for the business of the vessel at New York City, and as to the charters "believed or assumed and took it for granted that they contained conditions requiring the charterers, at their own expense, to provide and pay for all coal needed by the vessels." Under the conditions the court held that a lien would not lie holding that a lien cannot be enforced under the maritime law against a vessel for the value of coal supplied to it under an order of the charterer by one who knew or should be charged with knowledge that under the charter party the charterer is obliged to provide and pay for the coal, even if it was furnished both on the credit of the charterer and of the vessel.

The court based its decision upon the lack of good faith by the Coal Company in shutting its eyes to the relations of the charterers and owners of the *Kate* when it was its duty to investigate. In rendering its decision the court said:

"There are many cases in which the recognition or rejection of liens under the maritime law has depended upon the diligence of parties in ascertaining the limitations imposed by the

owners of vessels upon the authority of masters. These cases proceed upon the ground that good faith must have been exercised by the party seeking to enforce a lien upon the vessel." 164 U. S. at page 466.

The court quoted at length from *Thomas vs. Osborn*, 60 U. S. 31, 32; *The Grapeshot*, 76 U. S. 129, 136, and *The Lulu*, 77 U. S. 192, 201. These three cases are to be considered as showing the development of the principle above expressed.

*Thomas vs. Osborn* (*supra*) was decided at a time when the views of certain members of the Supreme Court were unusually antagonistic to an extension of admiralty jurisdiction. The case involved the right of lien of a firm which lent money to a master in a foreign port to purchase necessities. The court held on the facts before the court that the libellant had no right to a lien since he knew *or by diligence should have known* that the master had no power to borrow the money in question. The court said in part:

"If the master has funds of his own, which he ought to apply to purchase the supplies which he is bound by the contract of hiring to furnish himself, and if he has funds of the owners which he ought to apply to pay for the repairs, then no case of actual necessity to have a credit exist. And if the lender knows these facts, or *has the means, by the use of due*

*diligence, to ascertain them, then no case of apparent necessity exists to have a credit."*

Thus, under this rule established in 1856 it was incumbent on the lender of money to use due diligence in examining into the power of the master to borrow. If he did not do so, he obtained no lien.

This rule was, however, changed by the Supreme Court in *The Grapeshot*, 9 Wall. 129 (1870) in which it was held: The ordering by the master of supplies or repairs upon the credit of the ship, is sufficient proof of such necessity to support an implied hypothecation in favor of the material man, or of the ordinary lender of money, to meet the wants of the ship, who acts in good faith. Good faith of the lender or supply man became the test. In the same year the Supreme Court elaborated on this question in *Hazelhurst vs. The Lulu*, 77 U. S. 192, where the court said:

"Good faith is, undoubtedly, required of a party seeking to enforce a lien against a vessel for such a claim, but the fact that the master had funds which he ought to have applied to that object, is no evidence to establish the charge of bad faith in such a case, unless it appears that the libellant knew that fact, or that such facts and circumstances were known to him as were sufficient to put him upon inquiry within the principles of law already explained. *The Sarah Starr*, 1 Sprague, 455.

Express knowledge of the fact that the master had sufficient funds for the purpose, is not necessary to maintain the charge of bad faith, as it is well settled law that a party to a transaction, where his rights are liable to be injuriously affected by notice, cannot wilfully shut his eyes to the means of knowledge which he knows are at hand, and thereby escape the consequences which would (§ 202) flow from the notice if it had actually been received; or in other words, the general rule is that knowledge of such facts and circumstances as are sufficient to put a party upon inquiry, and to show that if he had exercised due diligence he would have ascertained the truth of the case, if equivalent to actual notice of the matter in respect to which the inquiry ought to have been made. *May vs. Chapman*, 16 Mees. & W. 355; *Goodman vs. Simonds*, 20 How. 343, 15 L. Ed. 934.

“Inquiry certainly need not be made as to the necessity for credit, if the master has no funds or any other means of repairing his vessel or furnishing her with supplies, and it is equally certain that proof of failure to institute inquiries is no defense to such a claim, even if the master has funds, unless that fact was known to the libelant, or such facts and circumstances were known to him as were sufficient to put him on inquiry, and fairly subject him to the charge of collusion with the master, or of bad faith in omitting to avail himself of the means of knowledge at hand to ascertain the true state of the case.

“Whenever the necessity for the repairs and supplies is once made out, it is incumbent upon the owners, if they allege that the funds could have been obtained upon their personal

credit, to establish that fact by competent proof, and that the libelant knew the same or was put upon inquiry, as before explained, unless those matters fully appear in the evidence introduced by the libelant \* \* \* .”

These two cases remained the leading cases on the subject until the *Kate* was decided in 1896. The only case in point handed down by the United States Supreme Court was between the *Kate* and the Act of June 23, 1910, was *The Valencia*, 165 U. S. 264. In this case the libelant at several times and at the request of the charterers supplied coal to the S. S. *Valencia* then under a time charter to the New York S. S. Company. This time charter required the charterer to pay for all coal. The libelants were not aware of the existence of the charter at the time they furnished the coal, nor did they know where the ship sailed from, whether she was foreign or domestic, nor what was her credit. They were at the time without knowledge of the ownership of the vessel or of the relations between it and the New York S. S. Company, except that that company “appeared to be directing its operation.”

The court denied a lien. It based its decision upon *The Kate* and the cases above cited and said:

“The libelants knew that the Steamship

Company had an office in the city of New York. They did business with them at that office, and could easily have ascertained the ownership of the vessel and the relation of the Steamship Company to the owners. They were put upon inquiry, but they chose to shut their eyes and make no inquiry touching the matters or in reference to the solvency or credit of that company."

The court adopts the principle laid down by Severens, District Judge, in *The Samuel Marshall*, 49 Fed. 754 (1892) that

"If the vessel is then in the use, possession, and control of others than the owner, a presumption arises that such others are liable to pay the charges incident to the employment; and if the party furnishing supplies knew, or should have known, the facts in regard to the use and control of the vessel, there is the same reason for the presumption against credit being given to the vessel, when the charterer or other person standing in a similar relation to the vessel resides at the port of supply, as in cases when the owner operating the vessel on his own account resides at such port and 'when there is the same reason there should be the same law'."

The same court is careful to differentiate between the powers of a master and of a charterer to bind a ship in the following words

"There were cases of supplies furnished on the order of the master, and what was said by this court must, therefore, be taken in the light

of the principle, that as the master of the ship stands in the position of agent or representative of the owners, the latter 'are bound to the performance of all lawful contracts made by him, relative to the usual employment of the ship, and the repairs and other necessities furnished for her use.' *The Aurora*, 14 U. S. 1 Wheat. 95, 101 (4:45, 46),"

or as expressed in *The St. Jago de Cuba*, 9 Wheat. 409, 416, the law maritime, in order that the ship may get on,

" 'attaches the power of pledging or subjecting the vessel to materialmen, to the office of shipmaster, and consider the owner as vesting with those powers by the mere fact of constituting him shipmaster'."

In conclusion the court said:

"We mean only to decide, at the time, that one furnishing supplies or making repairs on the order simply of a person or corporation acquiring the control and possession of a vessel under such a charter party cannot acquire a maritime lien if the circumstances attending the transaction put him on inquiry as to the existence and terms of such charter party, but he failed to make inquiry, and chose to act on a mere belief that the vessel would be liable for his claim."

Before, therefore, the Act of June 23, 1910, was passed the company furnishing fuel to a ship on request of the master secured thereby a lien on the ship for the value of the fuel provided that the supply man acted in good faith. He acted in good

faith provided he did not know of lack of power by the master to bind the ship or of facts which should have aroused his suspicion and caused him to inquire. The position of the supplier of fuel on order of a charterer was not as strong. A charterer or anyone other than a master or owner had not only no presumed authority to bind the ship but, as stated in *The Samuel Marshall* (*supra*), the law presumed that the charterer did not have power to bind the ship.

Then was passed the Act of June 23, 1910. In *The Oceana* (*supra*) it was said that "obviously the act was passed in restriction of the rights of vessel owners and in the aid of those who furnished repairs, supplies and other necessities."

By it the presumption against the credit being given the ship which was the basis of *The Samuel Marshall* (*supra*), and *The Valencia*, (*supra*) was swept away. So far as the presumed power of the charterer or anyone else in possession to bind the ship is concerned, it became the same as the presumed power of the master. By the statute master and charterer in possession ranked the same in this respect.

The act by its very terms cast a presumption in favor of the supply man. The person intrusted

with the management of the vessel (the charterer if such it be as in the case at bar) *is presumed* to have authority from the owner to purchase supplies, regardless of their relations *inter se* and regardless of the charter provisions, and the power to confer a lien. The supply man supplies under the protection of this presumption. He is entitled to rely upon it—in the absence of knowledge or notice. By the terms of the act he deals with one presumed to have authority to purchase and bind the ship. We ask this court to bear this in mind. It is the situation in which libelant is found. The libelant dealt with one presumed to have authority.

Now, what are the qualifications on the statutory presumption—the supply man *knew*, or *by the exercise of reasonable diligence could have ascertained*, that the person ordering the supplies was without authority to bind the vessel.

Since the passage of the Act there have been two lines of decisions construing this qualification: First, that which places the burden of affirmative action on the part of the supply man and holds that he has no lien if he did not use due diligence in examining into the power of the person ordering; Second, that which simply requires good faith on the part of the supply man, and only deprives him

of his lien when dealing with one carrying the statutory presumption when he had actual knowledge of the want of authority or notice of such facts or circumstances sufficient to put a reasonable person upon inquiry, which if pursued with due diligence, would apprise him of the true situation.

The principle of the first mentioned is represented by the cases of *The Eureka* (District Court N. D., Calif. Nov. 7, 1913), 209 Fed. 373, and *The Francis J. O'Hara, Jr.*, (Dist. Ct. Mass.), 229 Fed. 312. These cases follow the doctrine of *Thomas vs. Osborn* (*supra*), which was repudiated in *The Grapeshot*, (*supra*), and in *The Kate*, (*supra*). In the former case the libelant had been assured by the person ordering supplies that he had bought the vessel and on the faith of that, and also that he was actually operating it, libelant furnished supplies; but was denied a lien because libelant had been supplying the *Eureka* with supplies for claimant as its owner for years prior to that time, and because it could have ascertained by simply telephoning the office of the claimant that the person ordering the supplies had no power to bind the vessel. In the latter case the master of the *Francis J. O'Hara, Jr.*, ordered salt of libelant. He was operating upon a lay, which denied his power to

bind the vessel. Libelant knew of the lay but not of the limitation of the master's authority. Libelant knew that on some lays the master would have authority, and on some he would not. But the court denied a lien because libelant did not affirmatively inquire as to his authority. Both of these cases ignore the principle of good faith and place but little stress upon the fact that the supply man in each was entitled to presume that the person ordering the supplies had authority to bind the vessel. The decisions are based on the failure of the libelant to inquire. If they correctly interpret the act, then the test of good faith is eliminated and the right to a lien depends upon the diligence exercised in attempting to ascertain the authority. Since diligence in ascertaining authority must be exercised when dealing with one presumed to have authority as well as one not so presumed, then the statutory presumption is totally nullified, for a presumption that a supply man cannot rely on is no presumption at all. We submit, however, that the weakness in these cases lies in the fact that the opinion of the learned court did not take into consideration the rule laid down in *The Grapeshot* (*supra*), and *The Kate* (*supra*), the rule of law existing at the time of the

passing of the Act, and which rule of law is declared by the Act.

It is our contention that the second line of cases properly construes the Act, and that the case at bar comes within them.

The leading case is *The Yankee*, 233 Fed. 919 (C. C. A. 3d Cir., May, 1916). In this the dredge *Yankee* chartered to a dredging company was being used in dredging in the Delaware River. The libellants furnished supplies to the *Yankee* on orders of the dredging company. The court assumed from the evidence that the dredging company was without authority under the charter to bind the vessel for supplies and necessities. It was held that under the provisions of the Act of May 23, 1910, the supply men were entitled to liens. It was urged that the supply men should have inquired concerning the ownership of the *Yankee*. After quoting the proviso in the Act the court said:

“This proviso is nothing more than a statutory declaration of a principle long recognized in maritime jurisprudence and repeatedly announced by the Supreme Court of the United States. *The Kate*, 164 U. S. 458, 17 Sup. Ct. 135, 41 L. Ed. 512; *The Valencia*, 165 U. S. 264, 17 Sup. Ct. 323, 41 L. Ed. 710. It is in effect that no lien shall be afforded and no presumption given in aid of a material man who

furnishes supplies under circumstances which put him on inquiry as to the authority of the one giving the order to bind the vessel. That is, no one with knowledge that supplies are ordered by one without authority to pledge the vessel, or no one awake to circumstances which suggest inquiry as to that authority, may shut his eyes to what he sees or to what he could see by looking, and avail himself of the remedies of the presumptions of the law.

“What are the circumstances upon which the claimant relies to bring the libelants within the proviso of the act? They consist, first, of the libelants’ knowledge of the financial difficulties of the Dredging Company, and second, of the failure of the libelants to inquire concerning the authority of the Dredging Company to bind the *Yankee* for supplies. The circumstances of financial difficulty of the Dredging Company would not have deprived a material man of a right to a lien had the Dredging Company owned the *Yankee*. Therefore, knowledge of the Dredging Company’s embarrassment suggested nothing concerning that company’s ownership of the *Yankee* or its authority to pledge her for supplies. Nor did there devolve upon the material man the duty to inquire concerning its ownership and the authority of the Dredging Company without attendant circumstances raising the question. Such circumstances must include something more than a mere order from a new customer, and without circumstances suggesting or compelling inquiry the statute does not require a supply man to ascertain the authority of the one giving the order, if he be a person designated by the statute. If such a duty devolved upon a material man to be performed at his peril in

all instances and without regard to circumstances, then the act would impose upon the material man the duty to ascertain with absolute certainty the validity of an order as a condition precedent to a maritime lien. If this were true the presumption of authority afforded by the act would be without purpose and the very object of the act defeated."

In *The City of Milford*, 199 Fed. 956 (D. Ct. Md. October, 1912), a similar decision is rendered. Here a resident of Tennessee sold under a deferred payment contract the S. S. *City of Milford* to the Maryland Steamboat Corporation. Under this contract the purchasing company had no power to incur liens upon the vessel. The purchasing company took possession of the vessel and secured supplies from the libelants. Thereafter the purchaser defaulted in its payments and the owner took the steamer back. The material men, who had presumed that the purchaser owned the vessel and had a right to subject the ship to liens, libeled. The court upheld their liens. To the claim that the libelants should have made inquiries as to the ownership, the court said:

"The general purpose of this enactment is plain. Hereafter when supplies are furnished for a ship to one lawfully having the management of the ship, the presumption is that the ship is liable for them. If the material man knows nothing about the authority of the per-

son in possession of the ship, except that he visibly has the management of it, he may furnish the supplies, and the ship will be bound for them. But he may know something more. He may have knowledge that the person intrusted with the management of the ship has, by agreement with the real owner of the ship, no right to subject it to liens. If under such circumstances, a material man furnishes supplies, he cannot hold the ship. If he could, he would profit by his own wrong. Even when he does not know certainly that the person having the management of the ship has no authority to bind it, he may have learned such facts or circumstances as will suggest to him the probability that such may be the case. If so, he may not shut his eyes and his ears to further inquiry. He cannot say: 'I admit that I heard something which, if true, indicated that the person who was ordering the supplies had no right to bind the ship for them; but I did not know whether that which I heard was true or not. I could easily have made inquiries, and, if I had inquired, I would have found out the truth'."

The court further said:

"Before this proviso can have any application, something must have occurred to put the furnisher of the supplies upon inquiry. The proviso is a proviso. It is to be understood in such sense as will harmonize it with the general purpose of the act. That purpose was to make the management of a vessel at its port of supply presumptive evidence of the right to bind it for supplies there furnished. That purpose prevails unless it shall be shown that the person so managing the vessel was unlawfully or tortiously in possession or charge of it,

or unless something has been brought to the knowledge or attention of the person furnishing the supplies which in honesty and good conscience puts upon him the duty of inquiry as to whether the person who has the management of the ship has the right to pledge its credit." *The Iola* (D. C. 189 Fed. 979; *The Ha Ha* (D. C.) 195 Fed. 1013; *The Thomas W. Rodgers* (D. C.) 197 Fed. 772. "To the same effect see *The Oceana*, 233 Fed. 145.

In *The Oceana*, the principle was again clearly enunciated.

"Accordingly the act gives a lien when supplies are furnished to a vessel upon the order of the owner or of any one authorized by him. It specifies that any person to whom the management of the vessel at the port of supply shall have been intrusted shall be presumed to have been authorized. If the material man knows nothing about the authority of the person in possession of the ship, except that he is managing it, he may furnish the supplies, and the ship will be bound for them. But he may know more. Consequently the proviso. But before this proviso can have any application something must have occurred to put the furnisher of the supplies upon inquiry."

The court then quoted from *The City of Milford* (*supra*) and proceeded:

"The act does not mean that the furnisher shall not have the right to rely upon the authority to bind the vessel presumed to exist in the officers and agents specified in the second section. It is only when he knows that such officers or agents do not have the requisite

authority, or under the circumstances is put upon inquiry as to their powers, that the presumption becomes inoperative. There must be an actual restriction of authority by the owner in the first place, and in the absence of affirmative knowledge of such restriction, or of circumstances which ought to raise a doubt in his mind, the furnisher is entitled to rely upon the presumption and will acquire a lien, even if the officer or agent in fact has no authority. The phrase, 'knew, or by the exercise of reasonable diligence could have ascertained,' was adopted from *The Kate*, 164 U. S. 470, 17 Sup. Ct. 135, 41 L. Ed. 512, and was used in the act of Congress to make it clear that, if the furnisher know of the existence of a charter party or of an agreement for the sale of the vessel, he is put upon inquiry as to its terms, and cannot excuse himself by denying ignorance of the terms, should it turn out that the charterer or agreed purchaser had undertaken to furnish the vessel at his own cost."

To the same effect are *The South Coast*, 247 Fed. 84 (C. C. A. 9th Cir., 1917), affirmed March 1, 1920, 40 Sup. Ct. Rep. p. 233, and *The Yarmouth*, 262 Fed. 250 (C. C. A., 5th Cir. Jan. 1920), *The Angie B. Watson* (Dist. Ct. Mass., June, 1921), 274 Fed. 218.

In *The Bronx*, 246 Fed. 809, the supplies in question were furnished by libelant to the charterer, after being notified by an officer of the owner that the owner would pay for such supplies. Libelant libeled the vessel therefor, and the court (Circuit

Court of Appeals, Second Circuit) notwithstanding such information sustained the libel.

In *The Eastern*, 257 Fed. 874, coal was furnished to the charterer by libelant. Previously, libelant had furnished supplies for the vessel to its owner. The District Court (Mass.) held that such a fact did not place libelant upon inquiry as to the right of the person in charge of the ship to order supplies and bind her therefor. The libel was sustained.

In *The Lord Baltimore*, 269 Fed. 824, the vessel was in possession of the charterer under a charter party, obligating the charterer to pay all its expenses, etc. In passing upon the question of libelant's right to a lien upon the vessel, the district court (Pa.) held that a person furnishing supplies to a vessel was bound to know that the supplies were in fact for the vessel; that they in fact reached her; that they were such as were reasonably necessary; and that they were ordered by a person in apparent authority to bind the vessel (any person named in the Acts of 1910); and that the libelant having fulfilled these requirements is entitled to his lien.

In *The Dana*, 271 Fed. 356, the charter party provided that the charterer was to return the vessel

in the same condition as received, free from all claims and liens, etc. Libellant was notified to that effect, but furnished the supplies in question to the charterer. The District Court (New York) sustained the libel.

Probably the last expression of the courts on this subject is in that of the *St. Johns*, 273 Fed. 1005 (C. C. A. 4th Cir., May, 1921). There the supply man furnished coal to a vessel on order of an agent of the charterer who was intrusted with her management at the port of supply. The charterer had no authority to confer liens, and again the principle of good faith was enunciated in these terms:

“Nobody told Coale & Co., one of the supply men, that the person intrusted with the management of the *St. John* at the port of supply, was appointed by the charterer, and not by the owner, and Coale & Co. never asked any questions on the subject. The owner says that, in refraining from inquiry, Coale & Co. failed to exercise the reasonable diligence required by the proviso to the third section of the act of 1910 (Comp. St. Sec. 7785). The Circuit Court of Appeals for the Second, the Third, the Fifth, and the Ninth Circuits have held the law to be otherwise. *The Oceana*, 244 Fed. 80, 156 C. C. A. 508; *The Yankee*, 233 Fed. 926, 142 C. C. A. 593; *The Yarmouth*, 262 Fed. 254; *The South Coast*, 247 Fed. 89, 159 C. C. A. 302.

“We are of like mind. A supply man who

knows nothing about a ship, other than it is a ship in possession of those who order supplies for her, may furnish them upon her credit, without making further inquiry, taking the chance—usually a remote one—that the possession of her was tortiously acquired.”

Nor is knowledge of the fact that the vessel supplied is under charter sufficient to charge the supply men with notice of its terms, or the obligation to inquire concerning those terms, by the holding of the more recent cases, *The Yarmouth* (*supra*). *The St. John* (*supra*). In the latter case it was said:

“We are not unmindful that in a number of well-considered cases it has been said that, if the supply man has notice that the ship is under charter, he is bound to inquire whether its terms forbid the charterer to pledge the credit of the ship. But does such a holding give proper effect to the act of 1910? To say that notice of a charter puts a supply man upon inquiry is in effect to hold that there is no presumption that a charterer may charge the ship, but the statute says that precisely that presumption shall exist. *The South Coast*, 247 Fed. 89, 159 C. C. A. 302; *The Yarmouth* (C. C. A.) 262 Fed. 254,”

From the foregoing it will be seen that the decided weight of authority is this: that the lien will be permitted unless the want of authority was known or such facts or circumstances existed as to put a supply man acting in good faith on inquiry

as to the want of authority, and that in the absence of such facts or circumstances the supply man is not bound to inquire. The obligation is analogous to that of a purchaser for value of commercial paper. He is not called upon to investigate its origin or consideration given for it when there is nothing about the paper itself or the circumstances attending its negotiation to excite suspicion.

Let us apply the foregoing principles to the facts at bar.

## THE EVIDENCE.

It is a fact that the libelant had no knowledge that the Gulf Mail Steamship Company was simply a charterer of the *Admiral Goodrich*. There is not a scintilla of evidence in proof of the contrary. August 14th, 1919, was the first time that the Shell Company itself had ever delivered oil to the *Admiral Goodrich* and that was the occasion of a rush order from the President of the Gulf Mail Steamship Company. (Quoting from the deposition of Mr. Buckley, Jr., pages 2 and 3.)

“A. Mr. Hartman called me up, I think it was about ten o'clock in the morning, and told me they wanted oil for the *Admiral Goodrich*, that they were in a great hurry for it, that she was, I believe, due to leave that evening. Q. What date was this? A. August 14, 1919. I had only just time to catch the tug that was over in the estuary to have a barge brought back to this city and make that delivery, which I was able to do, and we made delivery at about two o'clock in the afternoon of the same day.”

Further, it is a fact that libelant did not know that the Pacific Steamship Company was the owner of the *Admiral Goodrich*. There is no proof of the contrary. In fact, the officers and agents of the libelant had every reason to believe that the Gulf Mail Steamship Company was its owner. The

steamer was advertised in a reputable Marine daily, the "Guide," as one of the fleet of Gulf Mail steamships. (Page 70 Apostles on Appeal). The order came from one in charge of its operation. The bill was sent to the steamer "and its owners," No. 1 Drumm St., the office of the Gulf Mail Steamship Company. There was no evidence that the charter party had ever been filed in the customs office, although even that would not have been notice to the libellant. *The Dumois*, 68 Fed. 926; *The St. John*, 273 Fed. 1007.

Now appellee, in its answer to the amended libel, set out the defense of circumstances that should have placed appellant on inquiry. (Pages 27-8, Ap. on Ap.). But proof of these wholly failed. There was not a word of evidence to prove that "the name of the vessel, her home port and the house flag of claimant were plainly marked upon said vessel." As to prior dealing with the claimant for the *Admiral Goodrich*, it was said in *The Yankee*, *supra*, that "such circumstances must include something more than a mere order from a new customer." And even if that circumstance could be said to place a burden of inquiry on libellant, libellant's good faith is shown by the previous experience it had had in attempting to elicit information from

the Pacific Steamship Company concerning the ownership of its vessels. (Quoting from the deposition of Mr. Buckley, Jr., pages 3-4.)

“Q. What inquiry did you make as to ownership? A. I didn’t make any inquiry. Q. Why didn’t you make any inquiry as to her ownership? A. I never had been able to find out who the owners of these steamers were, they change around so often. Q. What steamers do you mean? A. Well, take these steamers on the Admiral Line, and the Pacific Steamship Company, the Alaska Steamship Company, the Pacific-Alaska Steamship Company, and then there was another one, another company; they were shifting their ships around so that you could not keep track of who the owners were; in fact, at one time I remember a case where I tried to find out who the owner of the steamer was, and they were very huffy about it, and thought I was trying to get control of the stock. So I gave that up as bad business; we never could get any business if we followed those tactics.”

But the delivery of oil by the Asiatic Petroleum Company to the *Admiral Goodrich* and the billing of the Pacific Steamship Company by libelant was notice of nothing to libelant. The correspondence offered in evidence by claimant shows that on October 21st, 1918, the libelant had been taking orders from the Pacific Steamship Company for subsequent deliveries of fuel to the *Admiral Goodrich*. (Exhibit No. 10 to Buckley’s deposition, page 9). At this time the *Admiral Goodrich* was not owned by the

Pacific Steamship Company. It was sold to claimant on October 24th, 1918. (Bill of Sale, Respondent-appellee's exhibit No. 18), and the bill of sale was never recorded in San Francisco, but instead at Portland, Maine, the place of claimant's head office (Endorsement on said exhibit). So that the libelant and its allied company, the Asiatic Petroleum Company, had been taking orders for fuel for the *Admiral Goodrich* from the Pacific Steamship Company prior to the time it owned the vessel and at a time when the Pacific Alaska Navigation Company was its owner. There is no proof that libelant ever knew that the ownership passed to the Pacific Steamship Company. Nothing was placed on record in San Francisco. Libelant had failed in its efforts to elicit information from the Pacific Steamship Company. It then did just what the act intended that a supply man might do—it dealt in good faith with the person in charge.

Counsel laid considerable stress on the fact that the name "Admiral" was a distinctive name of the Pacific Steamship Company. But the Pacific Steamship Company owned and operated many vessels of other names (Bond to Marshal, page 17 Ap. on Ap.) and it was only in October of 1918 that the Pacific Steamship Company came into the ownership of the *Admiral Goodrich*. Prior to that time

it was owned by the Pacific Alaska Navigation Company, and prior to that by the Arrow Line Steamship Company. (Ap. on Ap. page 36). So that the name, if anything, was a matter of confusion to libelant rather than distinction, and the confusion was the cause of libelant's efforts to learn the truth which was met with such a rebuff. The testimony gives reason for believing that there was an actual attempt on the part of the Pacific Steamship Company to cover up the true ownership of its vessels.

We submit that there is no proof of a single thing in the record to which libelant wilfully shut its eyes in order to hold this vessel. Libelant comes within the provisions of the statute. The burden of proving bad faith devolved upon appellee and we submit that it was not sustained.

We respectfully submit that the decree should be reversed and the libel impressed and judgment entered against the bond.

Respectfully submitted,

WILMON TUCKER,

IVAN L. HYLAND,

FORD Q. ELVIDGE,

*Counsel for Appellant.*

